

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 3, 2005

IN RE:

**PETITION OF CHATTANOOGA GAS COMPANY
FOR APPROVAL OF FRANCHISE AGREEMENT
WITH CLEVELAND, TENNESSEE**

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**DOCKET NO.
04-00231**

**ORDER APPROVING PETITION OF CHATTANOOGA GAS COMPANY FOR
APPROVAL OF FRANCHISE AGREEMENT WITH CLEVELAND, TENNESSEE,
PURSUANT TO TENN. CODE ANN. § 65-4-107**

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this Docket, at a Hearing held on January 12, 2005 for consideration of the *Petition of Chattanooga Gas Company for Approval of Franchise Agreement with Cleveland, Tennessee* (the "*Petition*") filed on July 30, 2004

Background

On July 12, 1984, the Tennessee Public Service Commission ("TPSC") issued an Order approving a franchise agreement between Chattanooga Gas Company ("Chattanooga Gas" or the "Company") and the City of Cleveland, Tennessee ("Cleveland") in TPSC Docket No. U-84-7309. That franchise agreement was for a term of twenty (20) years and required a franchise fee of two percent (2%) of the annual gross revenues from Chattanooga Gas's sale of gas to customers located within the city limits of Cleveland. In anticipation of expiration of that agreement, Chattanooga Gas and Cleveland began negotiations in regard to renewal of that franchise agreement. The new agreement presented for approval in this Docket is the result of

those negotiations.

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”¹ Tenn. Code Ann. § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”²

Petition

In its *Petition*, Chattanooga Gas requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107 (2004), of a franchise agreement contained in a Cleveland, Tennessee ordinance passed by Cleveland on April 2, 2004. According to the *Petition*, the agreement is the result of arms-length negotiations between Chattanooga Gas and Cleveland, and the franchise grant is necessary and proper for the public convenience and properly conserves the public interest.

The new agreement grants to Chattanooga Gas the nonexclusive right to provide natural gas service in Cleveland for a term of twenty (20) years. Additionally, the new agreement provides that the Company will pay a franchise fee of five percent (5%) of the Company’s gross receipts received from sales of any type of gas to the Company’s customers within the city limits of Cleveland. A copy of the ordinance is attached hereto as Exhibit 1

¹ Tenn. Code Ann. § 65-4-107 (2004)

² *Id*

Pre-filed Testimony of Steve Lindsey

On January 4, 2005, Chattanooga Gas filed the Direct Testimony of Steve Lindsey, Vice President of Operations for Chattanooga Gas, Chattanooga, Tennessee.³ According to Mr. Lindsey, Chattanooga Gas and its predecessors have operated for many years in Cleveland under various franchise agreements.⁴ Mr. Lindsey stated that the natural gas distribution system of Chattanooga Gas in Cleveland contains approximately 199.8 miles of pipe.⁵ Chattanooga Gas serves approximately 8211 customers in Cleveland, of whom approximately 82.2% are residential customers and 17.8% are commercial and industrial customers.⁶ Mr. Lindsey stated that without access to the public rights-of-way, Chattanooga Gas could not adequately operate, maintain, or replace its distribution system in Cleveland.⁷ Additionally, Mr. Lindsey testified that the negotiations in regard to this new agreement occurred over an extended period of time, and that there was significant give and take on both sides during the negotiation process.⁸

Mr. Lindsey also testified that the new agreement contains a number a provisions that alter the existing agreement.⁹ First, the franchise fee is fixed at five percent (5%) of gross receipts received from sales of gas to the Company's customers within Cleveland.¹⁰ Second, the new agreement provides for a quarterly payment schedule, rather than the monthly payment schedule contained in the existing agreement.¹¹ Third, the new agreement provides that Cleveland be given access at reasonable times to the Company's books for the purpose of ascertaining and/or auditing the amount of fees due to Cleveland, and that the Company must

³ Steve Lindsey, Pre-Filed Direct Testimony p 1 (January 4, 2005)

⁴ *Id* at 2

⁵ *Id*

⁶ *Id*

⁷ *Id*

⁸ *Id* at 5

⁹ *Id* at 3

¹⁰ *Id* at 4

¹¹ *Id*

furnish to Cleveland an annual report showing the amount of gross revenues from its sales of gas within Cleveland.¹² Fourth, the new agreement requires that if Chattanooga Gas desires to sell the assets of its gas system located within Cleveland as a stand-alone transaction and not as a sale of its larger gas system, it must offer Cleveland the opportunity to buy those asset located and situated in Cleveland on the same terms as being offered to the other party.¹³ Finally, the new agreement states that Chattanooga Gas will provide service personnel and equipment based in Cleveland and/or Bradley County, Tennessee to respond to customer service calls from locations within Cleveland, and shall provide the local public service agencies the Company's toll-free emergency telephone number and a listing of direct local telephone and pager numbers of local Company agents to contact in the event of an emergency.¹⁴ According to the new agreement, the Company must also have trained personnel available 24 hours a day, 365 days per year, who will promptly respond to emergency calls.¹⁵

Pre-filed Testimony of Joe Cate

On January 4, 2005, Chattanooga Gas filed the Direct Testimony of Joe Cate, City Manager of Cleveland, Tennessee.¹⁶ Mr. Cate testified that he was personally involved in the negotiation process along with Cleveland's attorneys.¹⁷ In his testimony, Mr. Cate noted that the new agreement provides for a term of twenty (20) years and a five percent (5%) fee on annual gross revenues received by Chattanooga Gas from the sale of gas to customers located within the environs of Cleveland.¹⁸ Mr. Cate also noted that, as a result of the negotiation process, the agreement provides for quarterly payments of franchise fees, access to the Company's books by

¹² *Id*

¹³ *Id*

¹⁴ *Id*

¹⁵ *Id* at 5

¹⁶ Joe Cate, Pre-Filed Direct Testimony p 1 (January 4, 2005)

¹⁷ *Id* at 2

¹⁸ *Id*

Cleveland, service requirements and a first right of refusal for Cleveland with regard to the sale of assets of the Company's gas system.¹⁹ According to Mr. Cate, the franchise agreement is necessary and proper for public convenience and properly serves and protects the public interest of the citizens of Cleveland.²⁰

January 12, 2005 Hearing

On January 12, 2005, a Hearing was held before the voting panel for the purpose of allowing the Company and Cleveland to introduce evidence in support of their request for approval of the *Petition*. At that Hearing the Company was represented by the following counsel:

D. Billye Sanders, Esq., Waller, Lansden, Dortch & Davis, 511 Union St, Suite 2700, Nashville, Tennessee 37219.

At the January 12, 2005 Hearing, Mr. Lindsey and Mr. Cate adopted their pre-filed testimonies filed on January 4, 2005 and were subject to examination by the panel.

Findings and Conclusions

Chattanooga Gas's franchise agreement with Cleveland continues a longstanding franchise arrangement in a community where Chattanooga Gas has extensive operations that rely on use of the public rights-of-way. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to Chattanooga Gas, its customers and the community. Based on a review of the testimony filed in this docket, the testimony presented at the Hearing on the merits of the *Petition*, and upon the record as a whole, the voting panel finds that the franchise agreement between Chattanooga Gas and Cleveland is necessary and proper for the public convenience and properly conserves the public interest. Accordingly, the panel voted

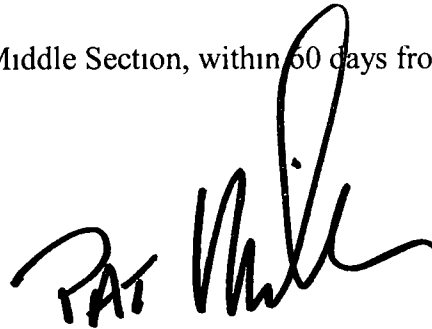
¹⁹ *Id* at 3-4

²⁰ *Id* at 4

unanimously to approve the agreement pursuant to Tenn. Code Ann. § 65-4-107 (2004).

IT IS THEREFORE ORDERED THAT:

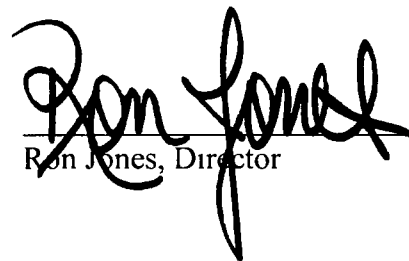
1. The *Petition of Chattanooga Gas Company for Approval of Franchise Agreement with Cleveland, Tennessee* is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within 15 days of the date of this Order; and
3. Any party aggrieved by the Authority's action embodied herein may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within 60 days from and after the date of this Order.



Pat Miller, Chairman



Deborah Taylor Tate, Director



Ron Jones, Director

ORDINANCE NO. 2004-05

GAS FRANCHISE

AN ORDINANCE GRANTING UNTO CHATTANOOGA GAS COMPANY, A SUBSIDIARY OF AGL RESOURCES, INC., A FRANCHISE FOR THE PURPOSE OF OPERATING A SYSTEM OF GAS DISTRIBUTION AND SERVICE WITHIN THE CITY OF CLEVELAND SO AS TO FURNISH GAS SERVICE WITHIN THE CITY TO ITS INHABITANTS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND MUNICIPAL GENERAL USE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND, TENNESSEE:

Section 1. This Ordinance shall be known as the "Chattanooga Gas Company Franchise Ordinance."

Section 2. For purposes of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) City - City of Cleveland, Tennessee.
- (b) City Manager - The City Manager of the City of Cleveland, Tennessee.
- (c) Company - Chattanooga Gas Company, a subsidiary of AGL Resources, Inc., a Georgia corporation, the Grantee of rights under this franchise and its lawful successors or assigns.
- (d) Construction - The installation, re-installation, laying, erection, digging, renewal, repair, replacement, extension and removal of the gas system, or any activity that may be necessary to maintain and operate a gas system.
- (e) Council - The City Council of the City of Cleveland, Tennessee.
- (f) Gas System - Any pipe, pipeline, tube, main, duct, conduit, service, fitting, feeder, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance, and any other personal property constructed, maintained, or operated by Chattanooga Gas Company as may be necessary to import, transport, distribute and sell gas.
- (g) Streets - The public streets, highways, avenues, roads, courts, alleys, lanes, ways, bridges, utility easements, sidewalks, parkways, public rights-of-way, or other public places or grounds in the City as they now exist or they may be established at any time during the term of this franchise in the City.

Section 3. That there is hereby granted to the Company a franchise to construct, reconstruct, maintain and operate a gas system in, upon, along, and under the streets within the City and to carry on, operate, enlarge and continue the same in said City as the same is now or may hereafter exist, for the purposes of furnishing gas service.

The Company shall also have the right and privilege within the City to manufacture, sell and distribute natural gas and all other products and services, including appliances, which are related thereto. Neither the enactment of this Ordinance nor anything contained herein shall constitute

any repeal or modification, expressed or implied, of any other ordinance of the City now in effect, whether codified or not, and the City expressly reserves the right to enact any and all such ordinances respecting the Company and its business as may be authorized by law, provided that any such ordinances shall not abridge the rights and privileges granted to the Company hereunder.

Section 4. That this franchise shall inure to the benefit of the Company, its successors and assigns, and shall exist and remain in effect for a period of twenty (20) years from and after passage of this Ordinance on final reading.

Section 5. That the Company shall not at any time charge in excess of such lawful rates as from time to time may be fixed by the Tennessee Regulatory Authority, or such other duly constituted body as may have power and authority in such matter. That the Company shall comply with all lawful orders of the Tennessee Regulatory Authority, or any other duly constituted body as may have power and authority in such matters respecting rates, the quality of gas, pressure, health measures and other conditions of service.

Section 6. That the Company in constructing or continuing a gas system along, across, under or through any City street, shall comply with all Ordinances of the City and shall take care not to obstruct or injure unnecessarily any such streets, and shall with reasonable diligence restore such streets to as good state of repair and condition as the same were before disturbed by said Company. The Company shall in all respects fully indemnify and save harmless the City from and against all damages, costs, attorneys fees, or other expenses which the City may incur by reason of such construction. The obligation of indemnity set forth in this section shall also extend to any construction in any street or right-of-way of the City by any property owner pursuant to any contract between said property owner and the Company authorizing the property owner to construct a service line or other gas line from any main of the Company to such property owner's property.

Section 7. That the Company, its successors, or assigns, by the exercise of this franchise, agrees to hold harmless the City on account of any loss, expense, damage, cost, attorneys fees, litigation expenses, or liabilities that may result from Company's operation of its gas system unless such loss, expense, damage, cost, attorneys fees, litigation expenses or liabilities are attributable in whole or part to the negligence of the City, its agents, servants or employees. This right of indemnification shall include all expenses reasonably incurred by the City in defending any claim arising from the Company's operation of its gas system, whether or not the claim has merit.

The Company hereby agrees, upon official request of the City, to furnish the City evidence of insurance in such an amount as may be reasonably necessary to protect the City.

Section 8. That the Company shall maintain all service lines to its customers up to and including the meters and shall, when necessary, repair, renew or replace service lines which are the property of the Company.

The Company shall provide service personnel and equipment based in Cleveland and/or Bradley County, Tennessee to respond to customer service calls from locations within the City, and shall provide the local public service agencies, including the City police department, the City fire department, and the 911 Center with the Company's toll-free emergency telephone number and a listing of direct local telephone and pager numbers of local Company

agents to contact in the event of an emergency. Company shall have trained personnel available 24 hours a day, 365 days per year, who will promptly respond to emergency calls.

The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of gas to all customers throughout its entire gas system within the City and on any enlargements and extensions thereof within the City. At the time each and every annexation ordinance of the City becomes operative the City shall provide the Company with a copy of its ordinance and its accompanying map precisely describing the annexed territory. The Company shall not unreasonably or arbitrarily refuse to make an extension for the purpose of giving gas service to the City, its inhabitants, institutions and businesses.

Section 9. City and the undersigned warrant and represent that, with the exception of the franchise granted to Company by a previously passed ordinance, which franchise was accepted by Company and City, there is no franchise granted by the City in force or effect, to any other person, firm or corporation, for the distribution and selling of gas, and that, during the term of this Agreement, the City will not enter into any other agreements or grant any other franchise for the distribution and selling of gas. The City reserves the right to grant a similar use of said streets to any person or corporation at any time during the period of this franchise so long as such right is not for the business of conveying and selling gas to others as a public utility. Nothing contained within this Ordinance will prevent the City from exercising its legal rights of eminent domain or from operating its own gas system within the City of Cleveland.

Section 10. That in consideration of the grant of this franchise, the Company shall pay as a franchise fee a sum equivalent to 5% of the gross receipts received from sales of any type of gas to the Company's customers within the environs of the City of Cleveland, which sum shall, in accordance with prevailing state law and the Company's rate tariffs be approved by the Tennessee Regulatory Authority, be directly added to the gas bills of, and collected from, those customers of the Company located within the City of Cleveland. Said fee shall be in addition to any sums due to the City from the Company as an ad valorem tax.

The amount of the franchise fee billed by the Company each quarter shall be paid to the City on or before the 15th day of the month following the end of each quarter. If the Company shall fail to pay the amount due, then the City reserves the right to revoke this franchise if said amount that is due and payable is not paid within a period of sixty (60) days after written notice of such delinquency to the Company.

The City shall have access at all reasonable times to the books of the Company for the purpose of ascertaining and/or auditing the amount of fees due the City. The Company shall furnish the City with an annual report showing the amount of gross revenues from its sale of gas within the City. The franchise fee imposed herein shall be effective from and after the adoption of this Ordinance and acceptance by the Company.

Other than as set forth herein, the Company shall not be required to pay any other fee or compensation of any kind in respect of the subject matter of this Ordinance. Provided, however, that the Company shall be required to pay any pavement permit fees in connection with cutting the City streets.

Section 11. If the Company desires to sell the assets of its gas system located within the City of Cleveland as a stand-alone transaction and not as a sale of its larger gas system, then the Company must offer the City the opportunity to buy those assets located and situated in the City of Cleveland on the same terms as being offered to some other party. The City will have forty-five (45) days to accept the offer and an additional ninety (90) days to close said transaction in the event the City elects to exercise the option to purchase.

In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer that Company may desire and this franchise cannot be sold, assigned, or transferred without the express written consent of the City Council, provided, however, that such consent shall not be unreasonably withheld.

In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise in arriving at the purchase price to be paid by the City.

Section 12. Any flagrant or continuing violation of the provisions of this Franchise Ordinance by the Company or its successors shall be cause for forfeiture of this franchise agreement, provided that the City shall have given the Company written notification of such violation and allow the Company a reasonable and appropriate time as determined by the City Manager to correct the cited violations.

Section 13. In the event it becomes necessary or expedient for the City to change the course or grade of any highway, street, avenue, road, alley, way, parkway or other public ground in which the Company is maintaining its gas system, then, upon the written request of the City, the Company will remove or change the location or depth of such gas system to conform to the proposed street alteration. It is agreed that Company will, at its own expense, within sixty (60) days after written notice from the City Manager, Company's receipt of final plan approval, and notice to proceed, begin the work of completing any and all things necessary to effect such change in position or location in conformity with such written instructions. Provided, however, that if such request is to accommodate any development by any person or entity other than the City or another governmental body, then the person or entity responsible for such development shall reimburse Company its expenses for such removal or change.

Section 14. After adoption of this Ordinance, should any section, subsection, sentence, provision, clause or phrase of this Ordinance be declared invalid by a court of competent jurisdiction or appropriate regulatory authority, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional, it being the intent in adopting this Ordinance that no portion thereof or provision or regulation contained therein shall become inoperative or fail by reason of the unconstitutionality or invalidity of any other portion or provision or regulation.

Section 15. That this Ordinance shall not be operative, as distinguished from its effectiveness, until it has been accepted by the Company. The Company shall have thirty (30) days from the date of the final passage of this Ordinance to file with the City Clerk its unconditional acceptance of the terms and conditions of this Ordinance. The Company shall also furnish the City with a copy of the written approval of the Tennessee Regulatory Authority which shall be filed with this Franchise Ordinance.

Section 16. All rights herein granted and/or authorized shall be subject to and governed by this Ordinance, provided, however, the City Council expressly reserves unto itself all its police power to adopt general ordinances and to take other action necessary to protect and promote the safety and welfare of the general public in relation to the rights now reserved to or in the City of Cleveland under its Charter and to all such rights as are now provided by general law.

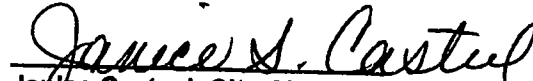
Section 17. All Ordinances, parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 18. This Ordinance shall take effect from and after its passage on final reading, the public welfare requiring it.

APPROVED AS TO FORM:


L. Harlen Painter, City Attorney

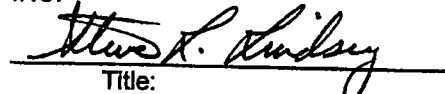

Tom Rowland, Mayor


Janice Casteel, City Clerk

ACCEPTANCE

The within Franchise and its terms and conditions are hereby accepted by Chattanooga Gas Company, a subsidiary of AGL Resources, Inc., on this 2 day of April, 2004.

CHATTANOOGA GAS COMPANY, A
SUBSIDIARY OF AGL RESOURCES,
INC.


Title:

Steven L. Lindsey, Vice President - Operations

Attested.
